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BEFORE THE ARIZONA CORPORATION COMMISSION**COMMISSIONERS**

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF
NEW LIFE TRUST, INC., dba DATELAND
UTILITIES FOR APPROVAL OF THE SALE OF
ITS ASSETS AND TRANSFER OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO DATELAND WATER, LLC.

DOCKET NO. W-20378A-05-0536
DOCKET NO. W-20395A-05-0536

DECISION NO. 68656**OPINION AND ORDER**

DATE OF HEARING: January 19, 2006
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
APPEARANCES: Mr. Ben Thomas, on behalf of New Life Trust, Inc.;
and
Mr. David Ronald, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On July 25, 2005, New Life Trust, Inc., dba Dateland Utilities ("New Life" or "Company" or "Applicant"), filed with the Arizona Corporation Commission ("Commission") an application in Docket No. W-20395A-05-0536 requesting approval for New Life to sell its assets and to transfer its Certificate of Convenience and Necessity ("Certificate" or "CC&N") to Dateland Water, LLC ("Dateland").

On February 18, 2003, in Commission Decision No. 65649, the Commission revoked New Life's CC&N after it failed to file its 2001 annual reports with the Commission. Subsequently, on July 1, 2005, New Life filed in Docket No. W-20378A-05-0485 an application with the Commission to reinstate and extend its CC&N.

On November 8, 2005, New Life filed a request to withdraw its application filed in Docket No. W-20378A-05-0485 to reinstate and extend its CC&N.

On November 18, 2005, Staff filed its Staff Report in Docket No. W-20378A-05-0536 recommending approval of New Life's request for the sale of its assets to Dateland; however, Staff did not recommend approval of New Life's request to transfer its CC&N as it had been revoked by the Commission and the Company had subsequently withdrawn its request to reinstate and extend its CC&N.

On November 30, 2005, a Procedural Order was issued setting the hearing to commence on January 19, 2006 on the application and also setting associated procedural deadlines including the publication of notice of the hearing.

On December 15, 2005, the Applicant published its Affidavit of Publication and Proof of Mailing.

On January 19, 2006, a full public hearing was convened before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Mr. Ben Thomas appeared on behalf of Applicant, Staff appeared through counsel and presented evidence and testimony. No members of the public appeared to give public comment. Pending late-filed exhibits, all matters were taken under advisement at the conclusion of the hearing.

On January 25, 2006, Staff filed a Notice of Filing Late-Filed Exhibit, which outlined additional recommendations made by Staff at the hearing.

On February 6, 2006, the Company filed a Late-Filed Exhibit, which demonstrated that notice had been given to customers in the service area outlining the Company's violations with the Arizona Department of Environmental Quality ("ADEQ").

On February 15, 2006, the Hearing Division issued a Procedural Order in this matter, which ordered Staff to file a Supplemental Staff Report by March 3, 2006, regarding the Company's ADEQ violations and any further recommendations by Staff. Additionally, the Procedural Order reopened the matter and extended the time clock.

On March 3, 2006, Staff filed its Supplemental Staff Report.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

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3 1. New Life is an Arizona Corporation engaged in the business of providing water
4 services in Arizona.

5 2. New Life is an Arizona Limited Liability Company ("LLC") in good standing with the
6 Commission's Corporation Division.

7 3. New Life originally received Commission authority to provide water services in
8 Decision No. 61370 (January 29, 1999). At that time New Life served 13 customers and expected to
9 add an additional 220 customers within a five year period and ultimately 4,000 customers at build out
10 of a planned subdivision.
11

12 4. On February 18, 2003, the Commission revoked New Life's CC&N in Decision No.
13 65649 after New Life failed to file its 2001 Annual Reports with the Commission. Since that time,
14 New Life has continued to operate without a CC&N.

15 5. On November 23, 2004, Mr. Douglas Johnson, owner of New Life at the time sold all
16 of the shares of New Life to Youth Business Exchange, which was owned and managed by Mr.
17 Robert Thomas.
18

19 6. On June 13, 2005, Youth Business Exchange sold all of the shares of New Life to
20 Messrs. Myron, Robert and Ben Thomas.

21 7. New Life filed two applications with the Commission. The first application filed on
22 July 1, 2005 by Mr. Ben Thomas¹ requested approval to reinstate New Life's CC&N and to include
23 additional territory within its CC&N. According to Staff's Report, Staff held several discussions
24 with Mr. Ben Thomas regarding the application. Thereafter, Staff concluded that New Life did not
25 have adequate records or projections for Staff to conduct a proper analysis or make recommendations
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27
28 ¹ Mr. Ben Thomas is the secretary of New Life Trust, Inc.

1 regarding reinstatement and extension of New Life's CC&N.

2 8. Subsequently, on November 8, 2005, New Life withdrew its application (Docket No.
3 W-20378A-05-0485) to reinstate and extend its CC&N. Staff's Report stated that Staff believed the
4 withdrawal of the application to reinstate and extend New Life's CC&N was the best approach, as the
5 Company had not begun to perform the level of engineering planning, testing or financing necessary
6 for Staff to review the application, without requesting a long extension of the time clock or denial of
7 the application.
8

9 9. At hearing, the presiding Administrative Law Judge ordered Docket No. W-20378A-
10 05-0485 administratively closed.

11 10. The second application and the one at issue in this docket was filed on July 25, 2005,
12 and requested approval to sell New Life's utility assets and transfer of the CC&N New Life hoped
13 would be reinstated and extended, to Dateland. According to New Life's application it is requesting
14 approval to sell its assets to Dateland because the new owners of Dateland are reluctant to invest in
15 the utility until the assets have been transferred. Additionally, Staff concluded that based on the
16 discussion above in Findings of Fact Nos. 7 and 8 the issue of the transfer of CC&N was moot as
17 Staff could not recommend to transfer a CC&N that New Life does not have.
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19 11. New Life's service area is located approximately 50 miles west of Gila Bend. New
20 Life's existing water system is comprised of one well, a pressure tank and a distribution system
21 serving 13 connections. According to Staff's Report, due to insufficient data regarding the Company,
22 Staff was unable to determine if New Life's water system has adequate capacity to serve its existing
23 customer base.
24

25 12. In its Staff Report filed November 18, 2005, Staff reported that according to the
26 ADEQ the New Life system is delivering water that does not meet the water quality standards
27 required by the Arizona Administrative Code. Staff further stated that New Life exceeded the
28

1 maximum containment level ("MCL") for fluoride and that ADEQ reported that the Company had
2 several monitoring and reporting deficiencies.

3 13. At hearing, Staff's witness testified that it had received a compliance report from
4 ADEQ dated January 19, 2006 which showed that monthly testing for coliform had not been done in
5 recent months. Staff verbally modified its recommendations to include a recommendation that the
6 Company should file with Docket Control, as a compliance item in this docket, copies of its monthly
7 lab results for the total coliform analysis required by ADEQ. Staff further recommended that the
8 filing of the lab results should begin February 2006, continue after a Decision in this matter is issued
9 and end once the Company files documentation in this docket that ADEQ has determined that
10 Dateland is delivering water that meets the water quality standards required by the Arizona
11 Administrative Code. Additionally, Staff recommended that the monthly filings be docketed within
12 15 days after the end of each month.
13

14 14. On January 23, 2006, the U.S. Environmental Protection Agency ("EPA") reduced the
15 arsenic MCL from 50 micrograms per liter ("µg/l") or parts per billion ("ppb") to 10 µg/l.
16 According to Staff's Report, data on the New Life well shows arsenic concentration levels that
17 exceed the new EPA standard. Staff stated that due to the health concerns surrounding New Life
18 serving substandard water, the Commission should issue a moratorium on water service hookups that
19 would remain in place until further Order of the Commission.
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21 15. New Life's witness testified that customers in the service area had not received notice
22 concerning the water quality issues. At hearing, the presiding Administrative Law Judge ordered
23 New Life to provide notice regarding the water quality issues to each of the customers in the service
24 area and to include precautions that should be taken by customers until the issues were corrected. On
25 February 6, 2006, New Life docketed a copy of the notice it sent to customers which included
26 precautions that should be taken by customers until the water quality issues are resolved and also
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1 included the Company's plans to resolve the issues.

2 16. On March 3, 2006, Staff filed a Supplemental Staff Report which provided the
3 following updated information on the Company's ADEQ violations:

4 Violation: System failed to monitor for nitrates 5 in 2000, 2002 and 2005.	Action/Update: Nitrate sampling was taken on 1/20/06. Sample in compliance with MCL.
6 Violation: System tested positive in January 7 2006 for total coliform.	Action/Update: A series of four tests will be taken. The two tests in the series taken in February were negative.
8 Violation: System failed to monitor lead and 9 copper during the period of 2000 through 2005.	Action/Update: First set of initial lead and copper was conducted in January 2006. Samples in compliance with MCL. Additional lead and copper test conducted, waiting for test results.
10 Violation: System exceeded the MCL for 11 fluoride in 2000, 2001 and 2003 and did not 12 conduct fluoride testing in 2002, 2004 and 2005.	Action/Update: Fluoride will be tested as part of the MAP tests in 2006. Company plans to begin construction of a treatment plant in 2006 that will remove fluoride and improve its water quality.

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14 17. Based on the updated information from ADEQ, Staff concluded that reasonable
15 actions were being taken by the Company to address its water quality issue. Further, Staff
16 recommended that Dateland file with Docket Control, as a compliance item in this docket, the
17 Approval to Construct issued by ADEQ for its proposed water treatment plant by September 30,
18 2006.

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20 18. A Curtailment Plan Tariff ("CPT") is an effective tool to allow a water company to
21 manage its resources during periods of shortages due to pump breakdowns, droughts, or other
22 unforeseeable events.

23 19. According to Staff's Report, New Life is currently charging rates approved in
24 Commission Decision No. 61370 (January 29, 1999) which approved its original CC&N.

25 20. Staff recommends approval of New Life's application to sell its assets to Dateland,
26 subject to the following conditions:

- 27 a. That the Commission issue a moratorium on water service hookups and
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order that the moratorium remain in effect until further Order of the Commission.

- b. That Dateland file with Docket Control, as a compliance item in this matter, copies of its monthly lab results for the total coliform analysis required by ADEQ beginning February 2006 and continuing until the Dateland files with Docket Control, as a compliance item in this docket, verification that ADEQ has determined that Dateland is delivering water that meets the water quality standards required by the Arizona Administrative Code. Additionally, the monthly filing shall be made within 15 days after the end of each month.
- c. That Dateland file with Docket Control, as a compliance item in this docket, the Approval to Construct issued by ADEQ for its proposed water treatment plant by September 30, 2006.

21. Staff recommendations, as set forth above are reasonable. In addition, we believe Dateland should be required to file an arsenic remediation plan, within 30 days of the effective date of this Decision, in order to address the Company's plan to comply with the EPA's new arsenic MCL standards.

22. Further, we are concerned that New Life has continued to operate without a CC&N since 2003. Therefore, we believe Staff should file within 180 days of a Decision in this matter, a recommendation in this docket, regarding whether New Life's CC&N should be reinstated or a recommendation on whether a new CC&N should be granted. Further, New Life has been charging rates approved in its original CC&N, we believe that Dateland should continue to charge the rates approved in Commission Decision No. 61370 (January 29, 1999) until further Order of the Commission. In addition, we believe that Dateland should be required to file, within 30 days of the effective date of this Decision, a Curtailment Plan Tariff for Staff's review and approval.

23. New Life is not located within any Active Management Area and therefore is not

1 subject to Arizona Department of Water Resources ("ADWR") reporting and conservation rules.

2 24. According to Staff's Report, the Utilities Division Compliance Section found no
3 outstanding compliance issues for New Life.

4 25. Because an allowance for the property tax expense of Dateland is included in the
5 Company's rates and will be collected from its customers, the Commission seeks assurances from the
6 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing
7 authority. It has come to the Commission's attention that a number of water companies have been
8 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
9 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure Dateland
10 should annually file, as part of its annual reports, an affidavit with the Utilities Division attesting that
11 the Company is current in paying its property taxes in Arizona.

12 CONCLUSIONS OF LAW

13 1. New Life is a public service corporation within the meaning of Article XV of the
14 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

15 2. The Commission has jurisdiction over New Life and the subject matter of this
16 application.

17 3. Notice of the application was provided in accordance with the law.

18 4. There is a public need and necessity for water service in the service territory.

19 5. Subject to compliance with the above-stated conditions, Dateland is a fit and proper
20 entity for approval of the sale of the assets from New Life to Dateland.

21 6. Approval of the sale of New Life's assets to Dateland is in the public interest.

22 7. The sale of the assets should be approved subject to the conditions set forth above.

23 8. Docket No. W-20378A-05-0485 should be administratively closed because New
24 Life's request to reinstate and extend its CC&N is moot.

25 ORDER

26 IT IS THEREFORE ORDERED that the application of New Life Trust, Inc., dba Dateland
27 Utilities, for approval of the sale of its assets to Dateland Water, LLC, is hereby approved,
28 conditioned on Dateland Water, LLC's compliance with the following six ordering paragraphs.

1 IT IS FURTHER ORDERED that Dateland Water, LLC, shall file with Docket Control, as a
2 compliance item in this docket, copies of its monthly lab results for the total coliform analysis
3 required by ADEQ and that the monthly filing of the lab results shall commence February 2006 and
4 continue until Dateland Water, LLC, files with Docket control that ADEQ has determined that
5 Dateland Water, LLC, is delivering water that meets the water quality standards required by the
6 Arizona Administrative Code.

7 IT IS FURTHER ORDERED that a moratorium on water service hookups for Dateland
8 Water, LLC, is effective immediately and that such moratorium shall remain in effect until further
9 Order of the Commission.

10 IT IS FURTHER ORDERED that Dateland Water, LLC, shall file with Docket Control, as a
11 compliance item in this docket, the Approval to Construct issued by ADEQ for its proposed water
12 treatment plant by September 30, 2006.

13 IT IS FURTHER ORDERED that Dateland Water Company, LLC, shall file with Docket
14 Control, as a compliance item in this docket, a Curtailment Plan Tariff, for Staff's review and
15 approval, within 30 days of the effective date of this Decision.

16 IT IS FURTHER ORDERED that Staff shall file within 180 days of the effective date of this
17 Decision, a recommendation in this docket regarding whether the prior Certificate of Convenience
18 and Necessity granted to New Life should be reinstated or a recommendation on whether a new
19 Certificate of Convenience and Necessity should be granted.

20 IT IS FURTHER ORDERED that Dateland Water Company, LLC, shall file with Docket
21 Control, as a compliance item in this docket, an arsenic remediation plan within 30 days of the
22 effective date of this Decision.

23 IT IS FURTHER ORDERED that Docket No. W-20378A-05-0485 is hereby administratively
24 closed.

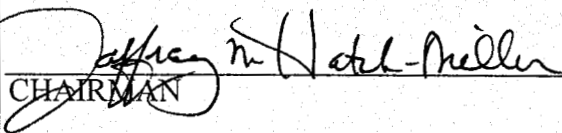
25 IT IS FURTHER ORDERED that Dateland Water Company, LLC, shall continue to charge
26 rates approved by the Commission in Decision No. 61370 for New Life Trust, Inc., dba Dateland
27 Utilities until further Order of the Commission.

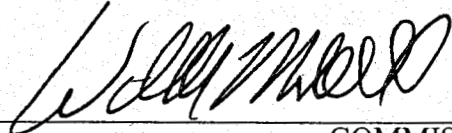
28 ...

IT IS FURTHER ORDERED that Dateland Water, LLC, shall file as a part of its annual report, an affidavit with the Utilities Division attesting that the Company is current on paying its property taxes in Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN

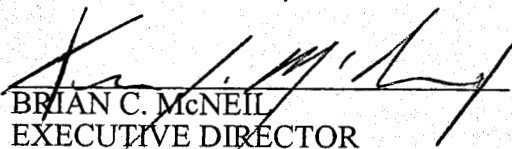

COMMISSIONER

COMMISSIONER


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 12th day of April, 2006.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

YBK:mj

1 SERVICE LIST FOR:

NEW LIFE TRUST, INC and DATELAND WATER

2 DOCKET NOS.:

W-20378A-05-0536 and W-20395A-05-0536

3
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